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2012 JAN 17 PM 3:10

BY: V REISINGER

5 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

6 **IN AND FOR THE COUNTY OF YAVAPAI**

7 **STATE OF ARIZONA,**

**CAUSE NO. P1300CR201001325**

8 Plaintiff,

**STATE'S REPLY TO JAMES  
DEMOCKER'S RESPONSE AND  
MOTION TO QUASH SUBPOENA**

9 vs.

10 **STEVEN CARROLL DEMOCKER,**

11 Defendant.

Assigned to Hon. Gary Donahoe

12  
13 The State of Arizona, by and through Sheila Sullivan Polk, Yavapai County Attorney and her  
14 deputy undersigned replies to James DeMocker's response and motion to quash, supported by the  
15 following memorandum of points and authorities.  
16

17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 The subpoena tuces tecum ("subpoena") was served by via Federal Express on September 7,  
19 2011 and the State concedes service was not made by the U.S. Mail.

20 The subpoena was properly signed and issued. Pursuant to A.R.S. §13-4071(A)(2), the  
21 county attorney may sign and issue a subpoena for "witnesses on a complaint or indictment...before  
22 the court in which the indictment is to be heard or tried...". An indictment in this case has been  
23 returned by the grand jury, trial has been set for April 3, 2012. James DeMocker ("JD") is a material  
24 witness and subject to subpoena in this criminal case.  
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1 The authority for a subpoena duces tecum was addressed in *Marston's Inc. v. Strand*, 114  
2 Ariz. 206, 263, 560 P.2d 778, 781(1977). "Although we recognize the differences between a  
3 subpoena ad testificandum and a subpoena duces tecum we believe that the term "for witnesses as  
4 used in the criminal code and A.R.S. § 21-427(c) includes both".

5 On July 28, 2011 JD was informed he was listed as a witness for the State. During this  
6 conversation, an interview was requested along with the production of his complete file. JD was  
7 advised not to destroy any records after he said "If I still have them". JD retained an attorney in  
8 September, 2011 after receiving the subpoena. Since that time, several conversations between  
9 counsels occurred about the production of records and the scheduling of an interview. JD's  
10 interview was scheduled for December 21, 2011 but then abruptly canceled. Considering the time  
11 and effort to interview JD without success, it is reasonable to conclude he is not cooperating in the  
12 process as contemplated by Rule 15.3.

13 JD never objected to the subpoena, did not request to limit the scope and did not claim it was  
14 burdensome. Rule 459 (c) (5) requires an objection be made within 14 days or receipt of subpoena.

15 ***Arizona has personal jurisdiction***

16 Arizona courts may exercise specific jurisdiction over nonresident defendants "to the  
17 maximum extent allowed by the federal constitution." *A. Uberti and C. V. Leonardo*, 181 Ariz. 565,  
18 567, 569, 892 P.2d 1354, 1356, 1358 (1995). To comply with federal due process standards, the  
19 nonresident defendant must have sufficient minimum contacts with the forum state and the assertion  
20 of jurisdiction must be reasonable. A finding of minimum contacts "must come about by an action  
21 of the defendant purposefully directed toward the forum state." *Uberti*, 181 Ariz. At 570, 892 P.2d  
22 at 1359, quoting *Asahji Metal Indus. Co. v. Superior Court*, 480 U.S. 102, 112, 107 S.Ct. 1026,  
23 1032, 94 L.Ed.2d 92, 104 (1987).  
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1 General jurisdiction applies if “the defendant has ‘substantial’ or ‘continuous and systematic’  
2 contacts with the forum state. *Batton v. Tennessee Farmers Mutual Ins. Co.*, 153 Ariz. 268, 270, 736  
3 P.2d 2, 4 (1987).

4 JD has substantial, continuous and systematic contacts with Arizona for over 3 years. On or  
5 about July 11, 2008 JD paid the retainer for attorney Chris Kottke (later reimbursed from the  
6 Kennedy Estate) causing a petition to be filed for the probate Virginia Carol Kennedy (“Kennedy  
7 Estate”), Yavapai county Superior Court file no. PB20080202. JD personally evicted James  
8 Knapp, without due process, from victim’s Bridle Path, Prescott, AZ property on or about August,  
9 2008. JD called and visited the Defendant at the Yavapai County Jail, took over Defendant’s  
10 finances and paid all of his bills since January, 2009. JD received and administered Charlotte  
11 DeMocker’s social security benefits following the death of her mother. JD persuaded, cajoled,  
12 pressured and influenced Katie DeMocker on the distribution of the Kennedy trust funds, which  
13 according to the State’s expert witness may have violated Arizona’s civil law. JD exercised undue  
14 influence over the Trustee in the distribution of Kennedy Trust funds for the benefit of the  
15 Defendant. Under the Fraud Schemes of the Kennedy Estate charge, the State must prove Defendant  
16 received a benefit.  
17  
18

19 **CONCLUSION**

20 If this court determines the subpoena is flawed or overbroad, the State will modify as ordered  
21 and serve JD by first class mail unless his attorney accepts service. This court is moved to order the  
22 deposition of James DeMocker at a time and place convenient for the parties.  
23

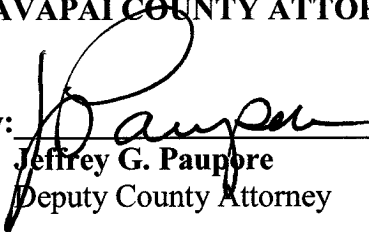
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1                   **RESPECTFULLY SUBMITTED** this 17<sup>th</sup> day of January, 2012.

2                   **Sheila Sullivan Polk**  
3                   **YAVAPAI COUNTY ATTORNEY**

4                   By:   
5                   Jeffrey G. Paupore  
6                   Deputy County Attorney

7                   **COPY** of the foregoing **emailed** this  
8                   \_\_\_\_\_ day of January, 2012, to:

9                   Honorable Gary Donahoe  
10                  Division 1  
11                  Yavapai County Superior Court  
12                  Via email to: [gdonahoe@courts.az.gov](mailto:gdonahoe@courts.az.gov)

13                  Division 1  
14                  Via email to Cheryl Wagster: [CWagster@courts.az.gov](mailto:CWagster@courts.az.gov)

15                  Craig Williams  
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19                  Via email to [craigwilliamslaw@gmail.com](mailto:craigwilliamslaw@gmail.com)

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25                  Daniela De La Torre  
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31                  Melody G. Harmon  
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By: 